

REMARKS

Claims 15-18, 20 and 22-40 are pending in the present application. In the Non-Final Office Action mailed March 6, 2008, claims 16, 23, 24 and 27 have been objected to but indicated to be allowable, and claims 15, 17, 18, 20, 22, 25, 26, and 29-40 stand rejected. Claims 15, 22, 27, 31 and 33 have been amended above. Reconsideration and allowance of the present application in view of the above amendments and following remarks is respectfully requested.

The specification was objected to for lacking an abstract. The specification is amended above to provide an abstract on a separate sheet. Entry of the same is respectfully requested.

Claims 22 and 31 were objected to for various formalities. The informalities have been addressed above in the manner suggested in the Office Action. Withdrawal of the objection to claims 22 and 31 is respectfully requested.

Claims 15, 17, 18, 20, 22, 25, 26, and 29-40 stand rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,484,437 to Michelson. Amended claim 15 recites, among other features, "wherein said first non-cutting portion, said cutting portion, and said second non-cutting portion have a first alignment to present a generally constant height dimension extending along said first pair of opposing faces of said cutting portion and aligned faces of said first non-cutting portion, the height dimension corresponding to an intersomatic space defined between the first and second cortical bone plates to facilitate insertion of the tool therein, said cutting portion being adapted to rotate relative to said first non-cutting portion to a second alignment where said second pair of opposed faces of said cutting portion are aligned with said aligned faces of said first non-cutting portion and said second pair of opposed faces define a height that projects said cutting portion outwardly from said aligned faces of said first non-cutting portion for cutting a first opening into the first cortical bone plate and a second opening into the second cortical bone plate while said first non-cutting portion is inserted therebetween." Support for the amendment to claim 15 may be found, for example, at page 10, line 13 to page 11, line 18, page 12, lines 7-21 and Figures 2, 4 and 5.

It is respectfully submitted that Michelson does not disclose elements 152 and 120 are configured in the manner recited for the first and second non-cutting portions and the cutting portion of the tool in claim 15. Therefore, withdrawal of the rejection of claim 15 is respectfully

Response to Non-Final Office Action
Application Serial No. 10/825,767
Atty Docket No. MSDI-343/PC273.22
Page 10 of 11

requested. Amended claim 31 recites an arrangement similar to that in claim 15. Since claims 15 and 31 distinguish Michelson, withdrawal of the rejection of these claims is respectfully requested.

With respect to claims 17, 18 and 20 depending from claim 15, they are allowable at least for the reasons claim 15 is allowable. With respect to claims 32-40 depending from claim 31, these claims are allowable at least for the reasons claim 31 is allowable. Claim 33 is amended to maintain consistency with amended claim 31. Furthermore, claim 32 is identical to claim 16, which was indicated to be allowable. The basis for rejecting claim 32 is not clear. Clarification of the same is respectfully requested, or, in the alternative, an indication that claim 32 is allowable.

Claim 22 is amended above to recite features similar to those recited in claim 27, and more particularly, "wherein said cutting further includes: initially inserting the tool so that the first pair of faces are each oriented toward a respective one of the first and second cortical bone plates and turning the handle to rotate the cutting portion...." Thus, claim 22 is allowable since Michelson does not disclose these method steps for the instrument in Figure 2. Claim 27 has been amended to avoid duplication of features recited in claim 22. Withdrawal of the rejection of claim 22 along with claims 25, 26, 29 and 30 depending therefrom is respectfully requested.

In view of the foregoing amendments and remarks, it is respectfully submitted that the application is in condition for allowance with pending claims 15-18, 20, and 22-40. Timely action towards a Notice of Allowability is hereby solicited. The Examiner is encouraged to contact the undersigned by telephone to resolve any outstanding matters concerning the subject application.

Respectfully submitted,
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Response to Non-Final Office Action.
Application Serial No. 10/825,767
Atty Docket No. MSDI-343/PC273.22
Page 11 of 11